

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 488 094
Issued to: Richard F. Hartlage

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2334

Richard F. Hartlage

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 3 December 1982, an Administrative Law Judge of the United States Coast Guard at Wilmington, North Carolina suspended Appellant's license for one month upon finding him guilty of misconduct. The specification found proved alleges that while serving as Master on board the United States SS JACKSONVILLE under authority of the license above captioned, on or about 13 October 1982, Appellant wrongfully allowed the vessel to enter the port of Wilmington, North Carolina without propulsion power, which was a hazardous condition, without first notifying the Captain of the Port, Wilmington, North Carolina as is required by 33 CFR 161.15

The hearing was held at Wilmington, North Carolina on 3 and 4 November 1982.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence three exhibits and the testimony of one witness.

In defense, Appellant offered in evidence one exhibit and the testimony of five witnesses and testified in his own behalf.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all licenses issued to Appellant for a period of one month.

The entire decision was served on 7 December 1982. Appeal was timely filed on 12 November 1982 and perfected on 14 February 1983.

FINDINGS OF FACT

On 13 October 1982, Appellant was serving as Master on board the United States SS JACKSONVILLE and acting under authority of his license while the vessel was at sea.

The SS JACKSONVILLE is a freighter of 11,601 gross tons and 523' in length. The vessel is a steel hull container vessel built in 1967.

Prior to the date of the alleged violation the SS JACKSONVILLE had visited the port of Baltimore. The vessel arrived at Baltimore, Maryland at 2230 on 7 October 1982. The main propulsion motor was flooded with bilge water on 8 October 1982 and was inoperative from 8 October to 10 October while being dried out under the supervision of the manufacturer's representative.

The vessel departed Baltimore at approximately 1330 on 10 October 1982, then transited the mouth of the Chesapeake Bay at the Virginia Capes and headed south.

On 11 October at approximately 1530, the vessel was located 1.15 miles from Cape Lookout Shoal Buoy No.44 when the main propulsion electric motor stopped suddenly. After repeated attempts to restart the motor failed, Appellant contacted Sea Land Vessel Operations Office in New York. The decision was made to tow the vessel to Wilmington, North Carolina for repairs.

The tug FORT CASWELL, operated by James R. Register, arrived at the SS JACKSONVILLE at approximately 0800 on 12 October 1982 and attached a hawser to the bow of the vessel and began towing it to the mouth of Cape Fear River, while another tug, the FORT FISHER, added assistance by making up to the stern quarter of the vessel. The vessel and tugs transited the Cape Fear River in this configuration until arrival at the port of Wilmington. Upon arrival at the port of Wilmington, a third tug, the SHAMROCK made up to the port bow of the SS JACKSONVILLE while the FORT CASWELL released the hawser and made up to the port side of the vessel amidship. The vessel arrived at Pier 8 in Wilmington at approximately 0630 on 13 October 1982 without incident.

The Coast Guard was notified of the estimated time of arrival of the vessel but was not informed of its operational condition.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that:

1. The Administrative Law Judge erred when he found that the SS JACKSONVILLE was in a hazardous condition when it lost its

main propulsion.

2. Even if the condition were hazardous, the Administrative Law Judge erred when he found that the Coast Guard was not informed of the condition of SS JACKSONVILLE.

APPEARANCE: Sea-Land Industries, Inc. by Gerard S. Doyle, Jr., Esq.

OPINION

I

Appellant asserts that the decision of the Administrative Law Judge that the SS JACKSONVILLE was in a hazardous condition was arbitrary, capricious and otherwise not in accordance with law. I disagree.

Appellant argues that the decision was not based on substantial evidence. It is difficult to understand Appellant's basis in this regard when there was uncontroverted evidence throughout the record that the main propulsion motor failed and the vessel was towed Wilmington, N.C. The question that was addressed and decided by the Administrative Law Judge was whether these circumstances were within the cognizance of 33 CFR 161.3 which defines hazardous condition as "any condition that could adversely affect the safety of any vessel..." There was uncontroverted testimony that the loss of main propulsion results in the loss of maneuverability. The question then is whether a vessel of the size and location of this vessel without maneuverability could affect the safety of any vessel. It is reasonable to conclude that when a vessel 523 feet in length loses maneuverability, that condition could affect its safety and that of other vessels.

Appellant states that in concluding that the failure of the main propulsion motor was a hazardous condition as defined by 33 CFR, the Administrative Law Judge improperly relied on his own opinion rather than the facts in the record. It is unavoidable that the trier of fact will constantly resort to his previous nonrecord experiences in deciding which evidence to credit on factual issues and which to reject as against the probability. See Appeal Decision No. 2233 (WALSH). In these administrative proceedings the trier of fact is charged with making decisions based on the record before him. I see neither requirement nor benefit in permitting him to make those decisions only after evacuating his mind of his experiences.

Appellant argues that the ruling of the Administrative Law Judge that any vessel which loses its propulsion ability is in a hazardous condition irrespective of the circumstances was incorrect

as a matter of law. I disagree with this assertion, primarily since it is a misstatement of the ruling of the Administrative Law Judge.

The Administrative Law Judge did not state that loss of propulsion irrespective of circumstances constituted a hazardous condition. Quite the contrary, he considered the size of the vessel, its location and the potential hazard to navigation of river traffic created by the tow.

Appellant presents the argument that the absence of a casualty was evidence that no hazardous condition existed. However, it is also true that a condition need not result in disaster for it to be considered hazardous. The operative regulation is not designed to "look back" at the events and make a determination of a "hazardous condition" based on whether a casualty occurred. The operative language of the regulation is "any condition that could adversely affect the safety of..." It was reasonable for the trier of fact to conclude that the loss of propulsion of a vessel that size being towed by three tugs, in that location, could adversely affect the safety of the vessel, other vessels and the environment. It is fortunate that no casualty occurred but that is not the test as to whether a hazardous condition existed as defined by the regulation.

II

Appellant contends that the Administrative Law Judge erred when he found that the Coast Guard was not informed of the condition of the SS JACKSONVILLE. I disagree.

33 CFR 161.15 requires that the port of destination be notified when a hazardous condition exists on a vessel. The only evidence of communication of any kind with the Coast Guard presented by Appellant was that Captain Riddle, Sea-Land Industries, called the Search and Rescue unit at Group Hampton Roads, VA to obtain weather information in the area of the vessel's position. He testified that the purpose of the call was to get weather information rather than inform the Coast Guard of the vessel's condition. Captain Riddle testified that he could not remember reporting the name of the vessel, which further indicated that its propulsion system failure was not likely to have been reported.

Captain Grace, Captain of the Port, Wilmington testified that regular Coast Guard procedure requires that the Search and Rescue units report to cognizant Captains of the Port any hazardous vessel conditions reported to them. No such report was received by Captain of the Port Wilmington.

In view of the evidence presented to the trier of fact, it was reasonable for him to conclude that the requirements of 33 CFR 161.15 were not met. Unless a review of the total record shows that the findings of the Administrative Law Judge were clearly erroneous, his findings shall not be disturbed. See Appeal Decision No. 2154 (McKEE). Upon careful review of the record I do not find that the Administrative Law Judge's findings were clearly erroneous.

CONCLUSION

I find that there is sufficient evidence of a reliable and probative character to support the findings that the charge and specification against Appellant are proved.

ORDER

The order of the Administrative Law Judge dated at Norfolk, Virginia on 6 December 1982 is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 6th day of December 1983.